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Attorneys for Plaintiff LHF Productions, Inc.

6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 LHF PRODUCTIONS, INC., a Nevada
9 Corporation,

10 Plaintiff,

11 vs.

12 MARIA GONZALEZ, an individual;
BRIAN KABALA, an individual; JOHN
13 KOEHLI, an individual; DANIEL
O'CONNELL, an individual; DONALD
14 PLAIN, an individual; ANTE SODA, an
individual; MATTHEW STEWART, an
15 individual; and JOHN AND JANE DOES.

16 Defendants

17 BRIAN KABALA, an individual;

18 Counter-Plaintiff,

19 vs.

20 LHF PRODUCTIONS, INC., a Nevada
Corporation,

21 Counter-Defendant,
22

Case No.: 2:16-cv-02028-JAD-NJK

**MOTION TO EXTEND TIME TO FILE
REPLY IN SUPPORT OF COUNTER-
DEFENDANT'S RENEWED MOTION TO
WITHDRAW A FALSE ADMISSION OF
NON-INFRINGEMENT (ECF 151)**

(First Request)

23 Pursuant to Local Rule IA 6-1(a) and Fed. R. Civ. P. 6(b)(1)(A), Counter-Defendant,
24 LHF PRODUCTIONS, INC. (hereafter referred to as "Counter-Defendant" or "LHF"), moves
25 to extend the deadline to file its Reply ("Reply") to Kabala's Opposition (ECF 161) to LHF's
26 Renewed Motion to Withdraw a False Admission of Non-Infringement (ECF 151) from the
27 present due date of June 29, 2018, by one week to July 6, 2018. This is the first request for such
28 an extension.

LR IA 6-1 and Fed. R. Civ. P. 6(b)(1)(A) provide that requests to extend time may be granted upon a showing of good cause when brought prior to the expiration of the relevant deadline. *Id.* “‘Good cause’ is a non-rigorous standard that has been construed broadly across procedural and statutory contexts.” *Id.* citing *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1259 (9th Cir. 2010) (discussing “good cause” in the context of Fed. R. Civ. P. 6(b)(1)). It generally involves a case-by-case assessment of whether there is some good reason for the delay or requested extension in the absence of bad faith and prejudice to the non-moving party. *See id.* at 1109-1110. Generally, there is good cause to extend time to permit a party to discuss factual or procedural matters with its counsel that may be relevant to the pending brief or to provide adequate time under the circumstances to permit a party to fairly respond to the legal issues raised in the preceding brief. Such is the case in the present request.

This Motion is necessitated by LHF counsel’s current conflicting docket, which includes (i) a Nevada Supreme Court reply brief in an unrelated matter, an (ii) opposition to Counter-Plaintiff’s Motion to Compel (ECF 155), and a (iii) reply in an unrelated matter in support of a motion to stay an appeal before the Ninth Circuit Court of Appeals, all of which are due the same day, this Friday, June 29, 2018. (*See* Austin Decl. at ¶ 3, attached as Exhibit 1). The deadlines for the pending appeal brief and the opposition to ECF 155 pre-date the deadline for this Reply which became due by operation of the Rules upon the filing by Counter-Plaintiff on Friday June 22, 2018, of an opposition to LHF’s Motion to Withdraw a False Admission (ECF 161). *Id.* at ¶ 4. The Ninth Circuit reply deadline of the same day is similarly driven by the filing of an opposition in that matter last Friday June 22, 2018, as well. *Id.* at ¶ 5. The net result of these prior-existing and concurrent obligations is that counsel for LHF will not have adequate time to address the issues set forth in the Opposition (ECF 155) with its client or to properly prepare a reply by the current deadline, given the three other briefing deadlines. *Id.* at ¶ 6.

Upon realizing the conflict on the morning of Monday, June 25, 2018, counsel for LHF immediately sought a stipulation with opposing counsel in accordance with LR 1A 1-3(f). *Id.* at ¶ 7. Opposing counsel refused to stipulate to the requested extension, necessitating the instant

1 Motion. *Id.*; *see also* Email Correspondence with Lisa Clay, dtd. June 25, 2018, attached as
 2 Exhibit 2.

3 In refusing the extension request, counsel for Counter-Plaintiff complained that because
 4 LHF had sought and obtained a one-week extension (ECF 160) on the deadline to oppose the
 5 motion to compel (ECF 155), and because such counsel for Counter-Plaintiff did not like the
 6 discovery responses timely served in response to Counter-Plaintiff's Third Requests for
 7 Production—which are unrelated to the motion or Reply at issue—no “courtesies” would be
 8 forthcoming for the instant request. *Id.* at ¶ 8. As such, the refusal appeared to be motivated by
 9 personal animus and not on the basis of some prejudice to Counter-Plaintiff, as no such prejudice
 10 was identified or articulated.¹ *Id.* at ¶ 9.

11 LHF, on the other hand, will be severely prejudiced if required to file its Reply by this
 12 Friday, June 29th. *Id.* at ¶ 10. The Motion at issue, a Motion to Withdraw a dispositive Admission
 13 (ECF 151), relates to a case dispositive issue. (*See* ECF 151). Absent the requested extension,
 14 counsel will not have the time to properly and adequately consult with Counter-Defendant on the
 15 issues raised in the opposition or prepare the Reply due to prior existing and significant briefing
 16 obligations in other matters—including the filing of an appellate reply brief before the Nevada
 17 Supreme Court, and an opposition in motion practice before the Ninth Circuit of Appeals. *Id.*
 18 Thus, while Counter-Plaintiff will suffer no identified harm aside from the apparent annoyance
 19 of its counsel, Counter-Defendant LHF could suffer case-dispositive harm.

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 27 ¹ That Counter-Plaintiff will not be prejudiced is also supported by his counsel's declaration in support of Counter-
 28 Plaintiff's request for a stipulation to extend the discovery deadlines in this matter (ECF 159), wherein counsel stated
 that she would be on vacation during the week of the requested extension, which is the week of July 4th. (*See* ECF
 159, Clay Decl. at ¶ 5).

1 As seeking a brief, one-week, extension to confer with counsel and secure adequate time
2 to fairly respond constitutes good cause for the requested extension, and as Counter-Plaintiff has
3 identified no prejudice it will suffer by the grant of such a request, while LHF could—absent the
4 requested extension—suffer case dispositive harm, there is good cause for the requested
5 extension, and it should be granted.

6 DATED this 26th day of June 2018.

7 /s/ F. Christopher Austin

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14 *Counsel for Counter-Defendant, LHF Productions,*
15 *Inc.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WEIDE & MILLER, LTD. and that on June 26, 2018, I served a full, true and correct copy of the foregoing **MOTION TO EXTEND TIME TO FILE REPLY IN SUPPORT OF COUNTER-DEFENDANT'S RENEWED MOTION TO WITHDRAW A FALSE ADMISSION OF NON-INFRINGEMENT (ECF 151)** via the United States District Court's CM/ECF filing system upon the following:

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